STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

PAUL DRESSEL and THERESA DRESSEL,

Plaintiffs-Appellees,

v

AMERIBANK,

Defendant-Appellant,

Supreme Court Docket No. 119959

Court of Appeals Docket No. 222447

Kent County Circuit Court No. 98-013017-CP

REPLY BRIEF OF AMICI CURIAE THE HUNTINGTON NATIONAL BANK AND ROCK FINANCIAL CORPORATION

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INTRODUCTION

The briefs filed by the State Bar of Michigan and Plaintiffs have prompted this reply by amici Huntington National Bank and Rock Financial Corporation. We believe certain assertions in those briefs are inaccurate and require correction.

- Filling out the mortgage and note does not involve discretionary judgment concerning which among a multitude of documents to use. Moreover, the "Non-Uniform Covenants" in the Dressel mortgage are not selected by Ameribank (or any other lender), but are part of the standard Fannie Mae form.

- Charging for document preparation has been a long-standing widespread practice. The many complaints filed in Michigan allege that tens of thousands of borrowers have been charged the fees in the major metropolitan areas of the state. The Bar must have known what was going on and the reason it took no action is because document preparation by lenders has never been considered the practice of law and, moreover, no one is harmed by the practice.

- As the Bar admits, the practice of law is not defined by the charging of a fee. Document preparation is an integral part of a loan transaction and charging a document preparation fee, which, as compared to the interest on a loan, represents only a tiny fraction of the loan cost – in Dressel, less than 1/2 of one percent – does not mean the lender is engaged in business other than the loan business.

- Plaintiffs' insistence that the only possible interpretation of the Real Estate Settlement Procedures Act and its Regulation X is that document preparation fees may be charged only for preparation of a mortgage and note is unwarranted. The Sixth Circuit of Appeals has pointed out that the language is sufficiently broad to include the cost of preparing additional documents.

- Plaintiffs and the Bar raise a parade of horribles that they claim will follow if this Court does not affirm the Court of Appeals. What will happen is no different than the way business has long been transacted, without damage to the public or destruction of the Bar.

In considering these points and others raised by the parties, we hope the Court will keep focused on the *Union Guardian* case,[1] which in 1937 cogently stated that lawyers need not be involved in every ordinary business transaction and that parties are free to draft documents for themselves. Remember that no Michigan case has prohibited a party to a transaction which drafts documents to charge for that action. Everyone knows that the entire cost of a profitable

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1 *Detroit Bar Association v Union Guardian Trust Co.*, 282 Mich 216; 272 NW 365 (1937).

transaction, including document preparation, is recovered, either directly or indirectly. There is no good reason to say that a bank may charge the customer for document preparation through its interest rates, but may not do so by openly telling the customer what the charge is. This, however, is what the Bar and Plaintiffs are advocating. Better to give the customer the information and let the customer choose which lender to deal with. That is the purpose of RESPA and Regulation X. As the HUD booklet Plaintiffs cite tells the homebuyer:

> ... You will also need to shop carefully to get the best value for your money. Plaintiffs' Appendix 2b.
>
> One of the purposes of RESPA is to help consumers become better shoppers for settlement services. RESPA requires that borrowers receive disclosures at various times. Some disclosures spell out the costs associated with the settlement, outline lender servicing and escrow account practices and describe business relationships between settlement service providers. Plaintiffs' Appendix 7b.

Ameribank, by listing the amount of the document preparation fee in the HUD Good Faith Estimate of Settlement Costs, Appellants' Appendix 6a, made the Dressels "better shoppers," but Ameribank was not thereby engaging in the unauthorized practice of law.

THE BAR AND PLAINTIFFS OVERPLAY THE "DISCRETION" INVOLVED IN DOCUMENT SELECTION, IMPLY LENDERS DRAFT DEEDS WHEN THEY DON'T AND CLAIM LENDERS SELECT NONUNIFORM COVENANTS WHEN THEY DO NOT.

To support its claim that Ameribank is practicing law, the Bar selects three aspects of the loan process as "particularly worthy of attention, because they implicate discretionary judgment: document selection, information concerning the status of property owners, and nonuniform covenants." Brief, 14. In each instance, the Bar's concern is unfounded, being based upon a lack of understanding of the residential mortgage lending process.

DOCUMENT SELECTION

The secondary market, in this case, Fannie Mae, dictates the form to be used, based upon the nature of the transaction. This varies from state to state, but in Michigan lenders use Fannie Mae Form 3023 for regularly amortizing fixed interest rate first mortgages and also for adjustable rate mortgages. *See* Exhibit A, which contains excerpts from Fannie Mae's Selling Guide for Lenders, 411-412. Separate forms are provided for other variations, such as balloon mortgages, where the monthly payments are not sufficient to pay off the entire loan and a lump sum is due at the end of the mortgage term. Exhibit A, 413-414. In short, once the lender and borrower agree on the kind of transaction they want, the mortgage form used is not a matter of anyone's discretion.

Plaintiffs say "There are scores of FNMA forms" and "scores of ways" each form can be filled out. Brief, 16. Taken literally, plaintiffs are telling the Court that in any residential mortgage transaction there are at least 1,600 (40 times 40) different permutations of mortgage forms that the unfortunate bank employee must choose among.[2] To support their point, Plaintiffs in their footnote 11 refer to documents on Fannie Mae's website, saying that for "multifamily" loans, there are 9 forms of note, two forms of guaranty, 50 mortgages and 19 permissible modifications. None of these forms and modifications, however, apply to residential mortgage loans like that made to the Dressels.[3]

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2 At another point, Plaintiffs refer to "the large universe of FNMA forms." Brief, 17.

3 Multifamily loans are for properties with five or more dwelling units. Exhibit B, 3, containing definitions from the website. Thus, the HUD Guide, and the form HUD-1, are not applicable to such properties because they apply only to "federally related mortgage loans" which cover properties designed for one to four families. 12 CFR 3500.5 and .2(b). Multifamily loans are basically commercial transactions. The standard Fannie Mae multifamily mortgage, Form 4023, when printed from the website, runs for 39 pages, without Exhibits. It even has a table of contents, *see* Exhibit C, including sections covering "Uniform Commercial Code Security Agreement"; "Assignment of Rents; Appointment of Receiver; Lender in Possession," "Taxes; Operating Expenses," "Waiver of Marshalling," "Books and Records; Financial Reporting," etc. These are not the single-family residential loans involved in this litigation.

Plaintiffs then cite in footnote 11 another website dealing with single-family loans which they say gives "48 addenda or riders that may or may not be appropriate given the circumstances." Reviewing the website shows that these choices are simply dictated by the property being mortgaged and what kind of mortgage the borrower wants, e.g., detached single family residence or condominium unit, standard, adjustable rate or balloon mortgage, etc. Again, the choice of form is dictated by the type of transaction the parties want.

Plaintiffs then refer to a site where the bank employee must choose among "54 single family mortgage forms, each of which can be modified with one of the 19 'modifications' and supplemented with one or more of the 48 addenda and riders." There are, indeed, 54 mortgage documents, but the choice is not difficult, because only one – Form 3023 – applies to Michigan. The other 53 versions cover the other 49 states, from Alabama to Wyoming, plus Guam, Puerto Rico, the Virgin Islands and the Navaho Nation. *See* Exhibit D. The 19 modifications are not mentioned at this site because, of course, as discussed above, footnote 3, they apply to the commercial multifamily mortgage loans. The addenda, also discussed above, are simply selected depending on the type of transaction the lender and borrower have agreed upon.

Finally, Plaintiffs refer to another site dealing with "special purpose mortgage documents covering various recurring situations and scenarios" as further evidence of the almost innumerable choices a bank employee must make. However, again, almost all of these are state specific, or involve other documents not used in Michigan such as the Deed of Trust or, as to a few, simply involve assignment forms, lien waivers or construction loans, which are governed by the kind of transaction. *See* Exhibit E.

When Plaintiffs' statements to this Court about the multiple documents that a bank employee must choose from are tested against the facts revealed by the Fannie Mae websites, the words "misrepresenting" and "misleading" spring to mind. These are words with which

Plaintiffs' counsel are familiar from the Sixth Circuit Court of Appeals' Opinion in *Brannam v Huntington Mortgage Co*, 287 F3d 601, (2002). *Brannam* was filed by Plaintiffs' counsel after losing their UPL claim in *Krause v Huntington National Bank* in Kent County. In *Brannam* they sought relief under the federal Truth in Lending Act, also repeating UPL allegations, which the federal court did not rule on. Plaintiffs' counsel relied in *Brannam* on a deposition of John Burmeister taken in *Krause*. The Sixth Circuit said:

> ... Huntington argues, and the district court agreed, that plaintiffs are misrepresenting Burmeister's testimony .... Having fully reviewed Burmeister's testimony and considering the testimony citied by plaintiffs in its proper context, this court agrees with Huntington and the district court. ... Plaintiffs latch onto this testimony to argue that Huntington never conducted any market analyses of document preparation fees, but simply extended the fee charged by FMB, which was based on Snyder's improper calculation. But that is misleading. ... 287 F3d at 604, 605..

The Court should review carefully what Plaintiffs counsel say, because as in *Brannam*, it may not be supported by the facts.

STATUS OF PROPERTY OWNERS

The Bar expresses concern that the lenders may somehow botch the way title is conveyed to the borrowers by, for example, not correctly listing the borrowers as joint tenants or tenants in common. We first note that the Dressel loan was a refinancing, whereby Ameribank's loan to the Dressels was used to pay off their prior lender, Countrywide Home Loans.[4] Thus, there was no new deed prepared in the Dressel case. In any event, all of the cases that have been filed only involve the preparation of mortgages and mortgage notes. Those documents do not convey title. Title to the borrowers is conveyed by a deed and there has never been any allegation in this or any of the many other pending cases that the lenders prepared a deed. Thus, the Bar's concern

[4] See the HUD-1, line 104, Appellants' Appendix 7a.

that "nor is there only one type of deed," Brief, 16, is irrelevant.[5] In fact, deeds are usually prepared by title insurance companies, not by lenders.

NON-UNIFORM COVENANTS

This is perhaps the most puzzling of the Bar's misconceptions about the mortgage lending process. Because the Fannie Mae Form 3023 signed by the Dressels had at its end three paragraphs, 21, 22 and 23 under the heading "Non-Uniform Covenants," the Bar concludes that the lenders' clerks were exercising discretion by adding these covenants. Apparently the Bar assumes that on a case-by-case basis the clerks decide whether to add non-uniform covenants and, if so, what sort of non-uniform covenants to add. Of course, the non-uniform covenants appeared in all Fannie Mae Michigan mortgages as long as Fannie Mae Form 3023 9/90 was in effect in the same form as they appeared in Dressel's mortgage.[6] Non-uniform covenants are simply covenants drafted by Fannie Mae to meet the requirements of the particular states. For example, Ohio uses Form 3036, and it concludes with three non-uniform covenants, paragraphs 22, 23, and 24, which differ from Michigan's. *See* Exhibit F for a copy of Form 3036. Thus, the Bar's statement that "According to the testimony of Lee Pankratz, Chief Lending Officer for Ameribank, a non-attorney selected the loan documents and the non-uniform covenants that were added to the uniform documents," Brief, 16, is not correct. The "non-uniform covenants" are part of Form 3023, they are not "selected" and nowhere in the testimony cited by the Bar, Appellee's Appendix, 34b, does Mr. Pankratz state that the non-uniform covenants "were added to the uniform documents."

Perhaps the Bar was misled by Plaintiffs' Brief, where they repeatedly tell the Court that the Dressel mortgage, Fannie Mae Form 3023, 9/90, is not a uniform instrument, because it contains "non-uniform covenants," that the mortgage "was customized to include 'non-uniform

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[5] It is strange that the Bar would make this argument, because in the immediately preceding sentence on p 16 they cite the testimony of Mr. Pankratz of Ameribank, pp 66-68, Appellees Appendix 34b, where Mr. Pankrantz states, p 66: "To my knowledge Ameribank has never been involved in the preparation of deeds."

[6] Periodically Fannie Mae revises its required forms. The current Form 3023 is dated 1/01.

covenants'" and that the non-uniform covenants are "**not** required by the FNMA" Brief, 6, 15, 16, 26-27. Emphasis in the original. Of course, Plaintiffs must know from visiting the websites they cite in their footnote 11 that the "non-uniform covenants" are inserted by Fannie Mae into its mortgage documents to meet the idiosyncratic requirements of the various states. They are not devised by the various lenders. Could, as Plaintiffs tell the Court, a lender remove the non-uniform covenants and still sell the mortgage to Fannie Mae? Not according to Fannie Mae:

> The lender must use the most current version of the Fannie Mae/Freddie Mac uniform first mortgage security instruments. In some cases, these security instruments may have to be adapted to meet the lender's needs or local jurisdiction requirements. However, if a security instrument is modified in a way that materially affects the rights of the parties, we will consider it to be a nonstandard document – which means that any mortgage closed on the document may not be sold to us unless we have agreed to accept the modified document on a negotiated basis. For example, our standard security instruments do not include language that provides for arbitration, and our authorized changes to these documents do not permit the addition of arbitration language. A Mortgage that is subject to arbitration – regardless of whether the arbitration language has been added to the security instrument or is part of a separate agreement – is not acceptable under our standard terms. Fannie Mae Selling Guide, p 404 (6-30-02).

Once again, when Plaintiffs' statements to the Court are tested against the facts, the language of the Sixth Circuit comes into mind.

THE SIGNIFICANCE OF THE WIDESPREAD PRACTICE OF CHARGING DOCUMENT PREPARATION FEES

Concerning document preparation fees, the Bar professes ignorance as to "how long the practice has been in existence or how widespread it is." Brief, 27. One is reminded of Captain Renault's exclamation that he was "Shocked, shocked" to learn there was gambling in Rick's American Café in Casablanca. There are pending more than 20 class action suits against many lenders, filed beginning in 1997 and covering the largest metropolitan areas in the state and each of them alleges that for the six years prior to the filing "thousands" of borrowers were

charged document preparation fees. *See* Exhibit G. Thus, for the Bar to profess lack of knowledge is somewhat surprising.

We agree that the mere fact the Bar does not take action against a practice does not validate it. However, when the Bar does not take action to curb a widespread practice of which it must have had knowledge, two conclusions can be drawn. First, there is the obvious conclusion that the Bar did not consider document preparation by lenders to be the unauthorized practice of law. The second conclusion is that the practice does not injure the public. If there were any basis in fact for the Bar's expressed concern that the public was at risk by lenders preparing mortgage documents, surely out of the tens of thousands of borrowers the Bar or Plaintiffs could have produced some who were injured as the result of defective documentation. However, none of the plaintiffs in any of the cases filed has claimed any error in the documentation nor have any of the many class action complaints alleged any systemic or even sporadic errors in the documents prepared for the tens of thousands of putative class members.

The Bar asserts it has only "limited resources" and thus urges the Court not to assume that the Bar's failure to prosecute should be interpreted as meaning there is no UPL violation by lenders. Brief, 26. Attached as Exhibit H is a summary from the May 2002 Bar Journal of 40 cases in which the Bar obtained permanent injunctions against UPL since 1990. A reading of the summaries reveals that the Bar was ready, willing and able to devote its resources to individual violators whose scope of operation, all taken together, is probably significantly smaller than the tens of thousands of people Plaintiffs claim have been touched by the alleged UPL of lenders.

We submit that the reason the Bar has never taken action against lenders is because the document preparation work of lenders results in accurate documentation of the transactions and no one has ever considered such preparation to be practicing law. Thus, because the public is not harmed, there is no reason for intervention. This accords with what the Court quoted approvingly as being the sole reason for prohibiting UPL:

> "Laymen are excluded from law practice, whatever law practice may be, solely to protect the public." ...
> "It is this purpose of public protection which must dictate the construction we put on the term 'unauthorized practice of law'."
> *State Bar of Michigan v Cramer*, 399 Mich 116, 134; 249 NW2d 1, 7. (1976).

There is no public perception that when lenders prepare mortgage documents they are practicing law. In the absence of any evidence of incompetence in the preparation of those documents, there is no reason for the Court to declare a common business practice to be the practice of law.

CHARGING A DOCUMENT PREPARATION FEE DOES NOT MEAN THAT A BANK IS ENGAGED IN THE DOCUMENT PREPARATION BUSINESS

While acknowledging that the charging of a fee is not dispositive of the UPL issue, the Bar nonetheless argues that

> ... if Ameribank's profit rests upon the document preparation fee, that would appear to be evidence that Ameribank is in the document preparation business rather than the lending business, in which case the activity is not "incidental" to its lawful business. ...
> Brief, 22.

Plaintiffs likewise argue that "charging a fee for preparing the documents establishes that the lender has **left** the business of lending and entered the business of law." Emphasis in original. Brief, 13.

The Court of Appeals stated that document preparation by lenders for their own transactions is "incidental to their business." Dressel, 3-4. More accurately, one should say that document preparation is an indispensable and fundamental part of the loan business. If the lender's documents are defective, the lender may lose its security interest in the property. However, the Court of Appeals, like Plaintiffs and the Bar, also said that charging a fee for document preparation changed it from an incidental activity to a business. Why this is so is not cogently explained.

The Court should be aware that the document preparation fee is very small compared to the interest on a loan. In Dressel, the interest rate is 7 1/2% on a $133,000 loan for 15 years. Over 15 years, the interest would be over $85,000.[7] If the $400 document preparation fee were interest – which it is not – it would represent only about 0.47% of the total amount, or less than one-half of one percent. How the collection of a separate fee converts a legitimate loan transaction into a business of engaging in the unauthorized practice of law is never explained. As the Court well knows, any lender that does not recoup its costs and turn a profit, whether through the collection of interest, the charging of fees, or both, cannot remain in business.

FEDERAL PREEMPTION PERMITS NATIONAL BANKS AND FEDERALLY CHARTERED SAVINGS ASSOCIATIONS TO CHARGE DOCUMENT PREPARATION FEES

In the Amicus Brief Huntington National Bank and Rock Financial filed, we attached copies of briefs filed by the Office of Thrift Supervision and Office of the Comptroller of the Currency in cases pending in Illinois challenging the charging of document preparation fees as UPL.[8] Those briefs asserted that document preparation is integral to loan transactions; that national banks and federally chartered savings associations charge document preparation fees as part of their businesses; and that any state laws to the contrary were preempted. The Illinois Circuit Court has now rendered its opinions, agreeing with the banking regulators. As to national banks, the Court said:

> In the cases *sub judice*, the plaintiffs allege that the defendants' practice of charging a "document preparation fee" for the preparation of certain documents in connection with mortgage transactions constitutes the unauthorized practice of law and violated the Illinois Consumer Fraud Act. The plaintiffs argue that the focus of these claims does not seek to regulate the lending practices of national banks, but rather seeks to regulate the practice of law and to prohibit fraud, matters that are traditionally regulated by state law. The plaintiffs do not object to document preparation

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7 For the interest rate, principal and term, see Appellants' Appendix 6a, 9a.

8 See Amicus Brief, Appendices C and D.

> by CMI; they do object to the charging of fees for document preparation. The plaintiffs assert that their claims are "incidental" and do not conflict with federal law.
>
> The Court finds that the document preparation fees charged by CMI, upon which the plaintiffs' claims are based, are "non-interest fees" as defined by 12 C.F.R. § 7.4002. Section 7.4002 constitutes a broad grant of authority to national banks and is not intended to subject national banks to purported state limitations in the exercise of their operations. See Barnett Bank v. Nelson, 517 U.S. 25 32-35 (1996). The Court further finds that the plaintiffs' claims, which purport to impose limitations on the defendants' authorization to charge fees for the preparation of documents in connection with mortgage transactions, are in direct conflict with federal law and are thus preempted.
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> *Wenzel v Citicorp Mortgage, Inc.*, Cook County Circuit Court, No. 01-CH 18067 (2002), 4. *See* Exhibit I.

The Court reached the same result as to federally chartered savings associations. *See* Exhibit J, the opinion in *Etter v Citibank F.S.B.*, Cook County Circuit Court, No. 02-CH 2193 (2002), 4.

Huntington National Bank is, of course, a national bank, as are some other defendants sued in Michigan. There are also defendants which are federally chartered savings associations, such as Flagstar. *See* Exhibit G. In addition, there are mortgage companies which are subsidiaries of national banks, state banks or federally chartered savings associations or are not affiliated with banks. Were this Court to extend the doctrine of UPL to cover the routine activities involved in making loans, an anomalous situation would be created. National banks and federally chartered savings banks and their subsidiaries eventually would obtain relief, if not in state courts, then in federal courts. There would be two sets of rules: state banks, their subsidiaries and other lenders, could not charge document preparation fees, while national banks and federally chartered savings banks and their subsidiaries could do so. There is no compelling reason for the Court to create such a situation and it should not do so.

DOCUMENT PREPARATION INVOLVES MORE THAN MERELY A MORTGAGE AND A PROMISSORY NOTE

Plaintiffs insist that the document preparation fee lenders charge should cover only the cost of filling in the blanks on a mortgage and note. Plaintiffs base this claim on their reading of the Real Estate Settlement Procedures Act and its Regulation X. Brief, 5. The lenders argue that there are many documents involved in a loan transaction, the culmination of which are the mortgage and the note. As these amici pointed out in their original brief, the file in the loan to the plaintiffs in *Krause v Huntington National Bank* contained 261 pages (not all of which were documents that were filled out, but all of which led up to the making of the loan, execution of the mortgage and note, and were necessary for the mortgage's sale in the secondary market.

In *Brannam v Huntington Mortgage Company*, 287 F3d 601 (6th Cir 2002) Plaintiffs' attorneys in *Dressel* asserted a Truth in Lending Act violation in federal court. The *Brannam* plaintiffs argued that RESPA and Regulation X mean that document preparation fees can only relate to the mortgage and note. The Sixth Circuit was not persuaded that RESPA and Regulation X had to be interpreted so narrowly:

> First, plaintiffs argue that the fee charged by Huntington is not bona fide because it is not "exactly what it purports to be." Plaintiffs go to great lengths to establish that the court must adopt this dictionary definition of "bona fide," in accordance with TILA's definition provisions. This means, they suggest, that Huntington can charge only its costs of preparing title-related documents, such as notes, mortgages, and deeds. This is so, the argument goes, because Huntington itself claimed that these were what the fee was for by entering the amount of $ 250 on Line 1105 of the Good Faith Estimate form required by Regulation X. As the district court noted, this is a strained effort by plaintiffs to bootstrap an arguable violation of Regulation X, for which there is no private right of action, into a TILA violation. Regulation X is simply not germane to plaintiffs' TILA claim. *See Inge v. Rock Financial Corp.*, 281 F.3d 613, 626 & n.4 (6th Cir. Feb. 26, 2002). Moreover, the plaintiffs seemingly ignore the plain language of Regulation Z, which permits the exclusion of fees for the preparation of not only mortgages and deeds, but also "settlement documents" - a broad term that would seem to encompass any other documents necessary for the closing of a mortgage loan. The

> appendix to Regulation X, which provides instructions for filling out the Good Faith Estimate form, states that Line 1105 is for the entry of "charges for preparation of deeds, mortgages, notes, etc." The inclusion of the term "etc." in the Regulation X, Line 1105 definition arguably leaves room for fees for the preparation of settlement documents other than title-transferring documents. But even assuming arguendo that the Line 1105 definition is limited to only title-transferring documents, it does not establish a violation of Regulation Z, which contains a different definition. Like the district court, we reject plaintiffs' strained construction of the applicable regulations. 287 F3d at 603-64.

Thus, contrary to Plaintiffs' claims, Regulation X does not have to be read as applying only to mortgages and notes.

ARGUMENTUM IN TERROREM: THE SLIPPERY SLOPE

Both the Bar and Plaintiffs seek to frighten the Court into ruling as they wish by arguing that if financial institutions, among the most highly regulated of industries, are permitted to charge document preparation fees in residential mortgage transactions, then the floodgates will burst and the state will be inundated with UPL. The Bar worries that the clergy will begin drafting and selling prenuptial agreements and insurance agents will do the same with trust instruments. Brief, 25. The Bar apparently does not distinguish between a bank preparing a mortgage and note to protect, in the case of the Dressels, the $133,000 it is lending and a cleric preparing a prenuptial agreement, which affects only the rights of the spouses, and does not protect the interests of the cleric. Once again, the Bar does not consider the teachings of *Union Guardian* and *Denkema*,[9] that a party to an agreement – such as Ameribank – can draft documents to protect its interests without engaging in UPL.

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[9] *Grand Rapids Bar Association v Denkema*, 290 Mich 56; 287 NW2d 365 (1939).

Plaintiffs say that a ruling for Ameribank will result in the Court facing a choice of permitting any party to a transaction to charge a fee for preparing documents or having to distinguish between banks and parties to other transactions.[10] Conceptually, what would be wrong with this? The service order we all have signed when we take a car into an auto dealer is a contract with legal consequences and the cost of preparing it is included in the overhead which determines the dealer's fee. Why would it be offensive if instead of presenting a bill for "Labor - $200; parts $300," the dealer prepared a bill that read "Labor $195, parts $300, agreement preparation $5"? Plaintiffs claim that consumers should receive information so they can make informed decisions. If the auto dealer's customers didn't like the $5 fee, they could shop around. Similarly, when Ameribank informed the Dressels that there was a $400 document preparation fee, they had a chance to shop around if they wished. As the Bar has argued, the existence of a fee is not a touchstone for determining if law is being practiced. *Union Guardian* recognized that drafting of "agreements in the every day activities of the commercial and industrial world," 282 Mich at 228-229, was an inevitable part of commerce and if that was so in 1937, it is even more so in 2002. There is no "free lunch" and if a business is candid enough to say, "This is what we are charging you for preparing the documents," why does it suddenly become the unauthorized practice of law? This Court should follow *Union Guardian's* lead and reject the claims of Plaintiffs and the Bar.

CONCLUSION

One of the unusual aspects of this UPL litigation is that the trial bench has on the whole rejected the UPL claims. We submit that the trial courts were right and that their daily experience with litigation and lawyers has taught them that borrowers do not believe their

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[10] Plaintiffs refer to this as a "Hobson's choice." Hobson was the 17th century Cambridge innkeeper who required customers of his livery to take whichever horse was in the first stall, hence providing them with no choice. Perhaps Plaintiffs meant to argue that the Court would be placed on the horns of a dilemma – two equally unattractive choices. Fortunately, the Court is in neither position, because it can follow the precedent of *Union Guardian* and permit lenders and borrowers to continue to structure their transactions as they have been doing for many years.

lenders are practicing law and that lenders are not drafting defective documents for borrowers, because if there were any significant number of defective draftings, the trial courts would notice it on their dockets. Such did not occur until the current feeding frenzy of class actions.

Since the public is not being injured by documents that do not accurately reflect their transactions and since the public is informed that the fee is being charged, why change what *Union Guardian* first taught us, that lawyers aren't necessary in every transaction?

We have a system that works and that has resulted in a nation with probably the world's highest percentage of home ownership. As the Court approaches Plaintiffs' and the Bar's novel claims, one is reminded of a sister discipline, medicine, and the Hippocratic oath taken by its practitioners, one of the principal precepts of which is, "Avoid harm." Any result other than affirmance of Judge Kolenda is likely to cause harm, not only to the lenders, but also to borrowers, who no longer will be able to compare what charges various lenders believe to be attributable to document preparation, because it will be subsumed, most likely, in an interest charge.

We believe the Court should reverse the Court of Appeals and reinstate Judge Kolenda's opinion.

Respectfully submitted,

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LIST OF EXHIBITS

EXHIBIT A: Fannie Mae Selling Guide, pgs 411-412; 413-414

EXHIBIT B: "Multifamily Property" Definition from Fannie Mae's Multifamily Loan Documents Website

EXHIBIT C: Multifamily Mortgage Form 4023 Table of Contents from Fannie Mae's Multifamily Loan Documents Website

EXHIBIT D: Single Family Mortgage Form Listing, including Michigan's Form 3023, from Fannie Mae's Family Single Loan Documents Website

EXHIBIT E: Special Purpose Documents for Various States from Fannie Mae's Single Family Loan Documents Website

EXHIBIT F: Ohio's Single Family Mortgage Form 3036, from Fannie Mae's Single Family Loan Documents Website

EXHIBIT G: List of Some Pending Class Actions

EXHIBIT H: Summary of UPL Injunctions from May, 2002 Bar Journal

EXHIBIT I: *Wenzel v Citicorp Mortgage, Inc.*, Cook County Circuit Court, No. 01-CH-18067 (2002)

EXHIBIT J: *Etter v Citibank F.S.B.*, Cook County Circuit Court, No. 02-CH-2193 (2002)

A

Exhibit 1 Security Instruments for Regularly Amortizing First Mortgages

Security instruments include mortgages, deeds of trust, and security deeds. The various uniform security instruments that are used for mortgages delivered to Fannie Mae are listed below. These security instruments must be supported by the appropriate mortgage notes, mortgage riders, note or rider addenda, mortgage assignments, and, if applicable, other product-specific documentation. We sometimes allow special-purpose alternative documents to be used in lieu of (or in addition to) the typical security instruments. These documents are addressed in Exhibit 2. The applicable supporting documentation for the various security instruments (or alternative documents) is discussed in Chapters 2 through 5 of this Part.

The various security instruments that are used for regularly amortizing mortgages may be found on our Web site (www.efanniemae.com). Authorized changes that must or may be made to these documents are set out in the Summary Page that accompanies each document.

The following security instruments are used for regularly amortizing one- to four-family fixed-rate first mortgages and one- to four-family adjustable-rate first mortgages.

State	*Security Instrument*	*Form No.*	*Date*
Alabama	Mortgage	3001	1/01
Alaska	Deed of Trust	3002	1/01
Arizona	Deed of Trust	3003	1/01
Arkansas	Mortgage	3004	1/01
California	Deed of Trust	3005	1/01
Colorado	Deed of Trust	3006	1/01
Connecticut	Open-End Mortgage	3007	1/01
Delaware	Mortgage	3008	1/01
District of Columbia	Deed of Trust	3009	1/01
Florida	Mortgage	3010	1/01
Georgia	Security Deed	3011	1/01
Hawaii	Mortgage	3012	1/01
Idaho	Deed of Trust	3013	1/01
Illinois	Mortgage	3014	1/01
Indiana	Mortgage	3015	1/01
Iowa	Mortgage	3016	1/01
Kansas	Mortgage	3017	1/01
Kentucky	Mortgage	3018	1/01
Louisiana	Mortgage	3019	1/01
Maine	Mortgage	3020	1/01
Maryland	Deed of Trust	3021	1/01
Massachusetts	Mortgage	3022	1/01
Michigan	Mortgage	3023	1/01
Minnesota	Mortgage	3024	1/01
Mississippi	Deed of Trust	3025	1/01
Missouri	Deed of Trust	3026	1/01

Exhibit 1 Security Instruments for Regularly Amortizing First Mortgages (cont ...) *

State	*Security Instrument*	*Form No.*	*Date*	*
Montana	Deed of Trust	3027	1/01	*
Nebraska	Deed of Trust	3028	1/01	*
Nevada	Deed of Trust	3029	1/01	*
New Hampshire	Mortgage	3030	1/01	*
New Jersey	Mortgage	3031	1/01	*
New Mexico	Mortgage	3032	1/01	*
New York	Mortgage	3033	1/01	*
North Carolina	Deed of Trust	3034	1/01	*
North Dakota	Mortgage	3035	1/01	*
Ohio	Mortgage	3036	1/01	*
Oklahoma	Mortgage	3037	1/01	*
Oregon	Deed of Trust	3038	1/01	*
Pennsylvania	Mortgage	3039	1/01	*
Rhode Island	Mortgage	3040	1/01	*
South Carolina	Mortgage	3041	1/01	*
South Dakota	Mortgage	3042	1/01	*
Tennessee	Deed of Trust	3043	1/01	*
Texas	Deed of Trust	3044	1/01	*
Texas	Home Equity Security Instrument	3044.1	1/01	*
Utah	Deed of Trust	3045	1/01	*
Vermont	Mortgage	3046	1/01	*
Virginia	Deed of Trust	3047	1/01	*
Washington	Deed of Trust	3048	1/01	*
West Virginia	Deed of Trust	3049	1/01	*
Wisconsin	Mortgage	3050	1/01	*
Wyoming	Mortgage	3051	1/01	*
Guam	Mortgage	3052	1/01	*
Puerto Rico	First Mortgage	3053	1/01	*
Virgin Islands	Mortgage	3054	1/01	*
Fannie Mae/Navajo Nation Mortgage	Mortgage	3070	5/01	*

Exhibit 2 Special-Purpose Alternatives to Security Instruments

We sometimes allow special-purpose alternative documents to be used in lieu of (or in addition to) the typical security instruments—such as a balloon loan refinancing instrument (which combines the provisions of the note and the security instrument); a consolidation, extension, and modification agreement (which consolidates the terms of outstanding mortgages that are being consolidated through a refinancing transaction); or a loan modification agreement (which modifies the terms of a balloon mortgage that initially had a conditional modification provision or the terms of an adjustable-rate mortgage that has been converted to a fixed-rate mortgage). These instruments must be supported by the appropriate mortgage riders, rider addenda, mortgage assignments, and, if applicable, other product-specific documentation. The applicable supporting documentation is discussed in Chapters 2 through 5 of this Part.

The various special purpose alternative documents that are used for regularly amortizing mortgages may be found on our Web site (www.efanniemae.com). Authorized changes that must or may be made to these documents are set out in the Summary Page that accompanies each document.

A. Balloon Loan Refinancing Instruments for Regularly Amortizing Mortgages

The following security instrument alternative may be used instead of the standard security instrument and note when a regularly amortizing fixed-rate balloon first mortgage that has a conditional refinance option is refinanced:

State	*Security Instrument*	*Form No.*	*Date*
Arizona	Balloon Loan Refinancing Instrument	3269.03	1/02
Arkansas	Balloon Loan Refinancing Instrument	3269.04	1/02
California	Balloon Loan Refinancing Instrument	3269.05	1/02
Florida	Balloon Loan Refinancing Instrument	3269.10	1/02
Georgia	Balloon Loan Refinancing Instrument	3269.11	1/02
Hawaii	Balloon Loan Refinancing Instrument	3269.12	1/02
Idaho	Balloon Loan Refinancing Instrument	3269.13	1/02
Illinois	Balloon Loan Refinancing Instrument	3269.14	1/02
Indiana	Balloon Loan Refinancing Instrument	3269.15	1/02
Iowa	Balloon Loan Refinancing Instrument	3269.16	1/02
Kansas	Balloon Loan Refinancing Instrument	3269.17	1/02
Louisiana	Balloon Loan Refinancing Instrument	3269.19	1/02
Missouri	Balloon Loan Refinancing Instrument	3269.26	1/02
Montana	Balloon Loan Refinancing Instrument	3269.27	1/02
Nevada	Balloon Loan Refinancing Instrument	3269.29	1/02
North Carolina	Balloon Loan Refinancing Instrument	3269.34	1/02
North Dakota	Balloon Loan Refinancing Instrument	3269.35	1/02
Ohio	Balloon Loan Refinancing Instrument	3269.36	1/02
Oklahoma	Balloon Loan Refinancing Instrument	3269.37	1/02
Rhode Island	Balloon Loan Refinancing Instrument	3269.40	1/02

Exhibit 2 Special-Purpose Alternatives to Security Instruments (cont ...)

State	*Security Instrument*	*Form No.*	*Date*
South Carolina	Balloon Loan Refinancing Instrument	3269.41	1/02
South Dakota	Balloon Loan Refinancing Instrument	3269.42	1/02
Tennessee	Balloon Loan Refinancing Instrument	3269.43	1/02
Texas	Balloon Loan Refinancing Instrument	3269.44	1/02
Utah	Balloon Loan Refinancing Instrument	3269.45	1/02
Wisconsin	Balloon Loan Refinancing Instrument	3269.50	1/02
Wyoming	Balloon Loan Refinancing Instrument	3269.51	1/02

B. Consolidation, Extension and Modification Agreement/Loan Modification Agreement

The following security instrument alternatives may be used instead of (or in conjunction with) the standard security instrument. The *Consolidation, Extension and Modification Agreement* may be used in connection with the refinancing of a mortgage that is secured by a property located in New York (including the refinancing of a balloon mortgage that has a conditional refinance option) if the terms of the prior notes and mortgages are being consolidated. Although this document is designed specifically for New York, a lender may develop a similar document for Puerto Rico "direct" mortgages (and, by so doing, will be deemed to have made our nonstandard document warranties in connection with each "direct" mortgage delivered to us). The *Loan Modification Agreement* may be used to document the modification of a balloon mortgage that has a conditional modification option or to modify the terms of the applicable documentation for an adjustable-rate mortgage that has been converted to a fixed-rate mortgage.

State	*Security Instrument*	*Form No.*	*Date*
New York	Consolidation, Extension and Modification Agreement	3172	1/01
All	Loan Modification Agreement	3179	1/01

B

Low Income Housing Tax Credits (LIHTC)
As the largest investor in LIHTC, Fannie Mae increases the availability of funds for affordable multifamily housing by making equity investments in qualified properties. Legislated into existence in the 1986 Tax Reform Act, low income housing tax credits serve as incentives for corporations to invest in low-income rental housing. Fannie Mae serves previously underserved markets characterized by very low incomes, HOPE VI public housing replacements, and persons with special needs.

Multifamily Affordable Housing
Properties with rent and occupancy restrictions which meet or exceed the following requirements: 1) at least 20 percent of all units have restricted rents affordable to households earning no more than 50 percent of area median income as adjusted for family size; or 2) at least 40 percent of all units have restricted rents affordable to households earning no more than 60 percent of area median income as adjusted for family size.

Market Rate Forwards
Fannie Mae finances new construction of multifamily properties with affordable rents for moderate-income families without rent restrictions. The Market Rate Forward product is targeted for financing construction of moderately priced new rental units.

Multifamily Property
A residential property composed of five or more dwelling units and in which no more than 20 percent of the net rentable area is rented to, or to be rented to non-residential tenants.

Rehabilitation Product Line Initiative
A Fannie Mae product which offers permanent financing for multifamily properties in need of moderate or substantial rehabilitation. The Rehabilitation Financing product is available across all multifamily financing product lines, provided the transactions have 100 percent of the units affordable to low- and moderate-income tenants. The initiative provides for rehabilitation dollars in an amount not to exceed $15,000 per unit (minimum $3,000 per unit).

Reserve Agreement
The Delegated Underwriting and Servicing Reserve Agreement. This is a contractual agreement among Fannie Mae, the custodian, and the lender, in which the lender agrees to establish a lender reserve and to pledge collateral to Fannie mae to secure the lender's obligations under Delegated Underwriting and Servicing. The Reserve Agreement also gives Fannie Mae contractual rights in the pledged reserve and provides Fannie Mae certain contract remedies to enforce the reserve requirements.

Seniors Housing
Seniors Housing is a Fannie Mae product which provides financing for owners of congregate and Assisted-living properties through select DUS Lenders. Congregate living units are designed for seniors who pay for some congregate services (e.g., housekeeping, transportation, meals, etc.) as part of the monthly fee or rental rate, and who require little, if any, assistance with activities of daily living (ADL).

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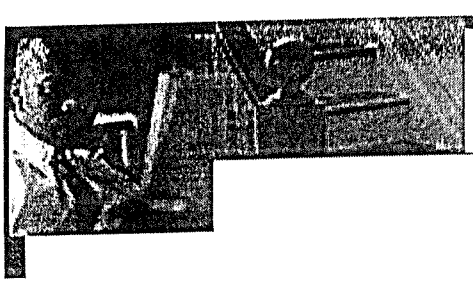


Single-Family
lending and servicing community

efanniemae

FORMS & GUIDELINES

Mortgage Documents
Security Instruments

Security instruments for regularly amortizing mortgages include the Fannie Mae/Freddie Mac Uniform Mortgages, Deeds of Trusts, or Security Deeds for each of the jurisdictions from which we purchase conventional mortgages. The following security instruments are available for downloading, viewing, or printing.

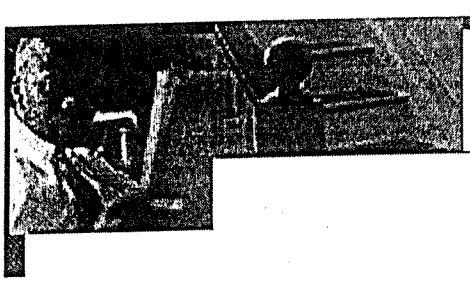
Document Number (.pdf)*	Document Summary (.doc)**	Document Title
3001	3001	Alabama - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3002	3002	Alaska - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3003	3003	Arizona - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3004	3004	Arkansas - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3005	3005	California - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3006	3006	Colorado - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3007	3007	Connecticut - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3008	3008	Delaware - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument

3009	3009	District of Columbia - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3010	3010	Florida - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3011	3011	Georgia - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3012	3012	Hawaii - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3013	3013	Idaho - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3014	3014	Illinois - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3015	3015	Indiana - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3016	3016	Iowa - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3017	3017	Kansas - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3018	3018	Kentucky - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3019	3019	Louisiana - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3020	3020	Maine - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3021	3021	Maryland - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3022	3022	Massachusetts - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3023	3023	Michigan - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument

3024	3024	Minnesota - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3025	3025	Mississippi - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3026	3026	Missouri - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3027	3027	Montana - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3028	3028	Nebraska - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3029	3029	Nevada - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3030	3030	New Hampshire - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3031	3031	New Jersey - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3032	3032	New Mexico - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3033	3033	New York - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3034	3034	North Carolina - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3035	3035	North Dakota - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3036	3036	Ohio - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3037	3037	Oklahoma - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3038	3038	Oregon - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument

3039	3039	Pennsylvania - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3040	3040	Rhode Island - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3041	3041	South Carolina - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3042	3042	South Dakota - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3043	3043	Tennessee - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
[illegible]	3044	Texas - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3044.1	3044.1	Texas Home Equity Security Instrument (First Lien) - Fannie Mae/Freddie Mac Uniform Instrument
3045	3045	Utah - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3046	3046	Vermont - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3047	3047	Virginia - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3048	3048	Washington - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3049	3049	West Virginia - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3050	3050	Wisconsin - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3051	3051	Wyoming - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3052	3052	Guam - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument

3053	3053	Puerto Rico - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3054	3054	Virgin Islands - Single-Family - Fannie Mae/Freddie Mac Uniform Instrument
3070	3070	Fannie Mae/Navajo Nation - Single-Family - Mortgage



Single-Family
lending and servicing community

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FORMS & GUIDELINES

Mortgage Documents
Special Purpose Documents

Special purpose documents are those that have been developed for use:

- as an alternative to the standard security instrument and note under certain circumstances (as is the case with the various state-specific Balloon Loan Refinancing Instruments and the New York Consolidation, Extension and Modification Agreement);
- in connection with specific types of mortgages that require extra documentation in addition to the standard security instruments, notes, riders, and addenda (such as the affidavit and agreement that is required for Texas Section 50(a)(6) mortgages or construction-related documents for HomeStyle mortgages);
- when changes are made to the terms of a mortgage (such as the Loan Modification Agreement); or
- as a standardized means of assigning a security instrument.

The following special purpose documents are available for downloading, viewing, or printing.

Document Number (.pdf)*	Document Summary (.doc)**	Document Title
3172	3172	New York Consolidation, Extension and Modification Agreement - Single Family - Fannie Mae/Freddie Mac Uniform Instrument
3179	3179	Loan Modification Agreement - Single Family - Fannie Mae Uniform Instrument
3185	3185	Texas Home Equity Affidavit and Agreement (First Lien) - Fannie Mae/Freddie Mac Uniform Instrument

3269.03	3269.03	Arizona Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.04	3269.04	Arkansas Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.05	3269.05	California Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.10	3269.10	Florida Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.11	3269.11	Georgia Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.12	3269.12	Hawaii Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.13	3269.13	Idaho Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.14	3269.14	Illinois Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.15	3269.15	Indiana Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.16	3269.16	Iowa Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.17	3269.17	Kansas Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.19	3269.19	Louisiana Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.26	3269.26	Missouri Balloon Loan Refinancing Instrument -

		Single-Family - Fannie Mae Uniform Instrument
3269.27	3269.27	Montana Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.29	3269.29	Nevada Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.34	3269.34	North Carolina Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.35	3269.35	North Dakota Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.36	3269.36	Ohio Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.37	3269.37	Oklahoma Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.40	3269.40	Rhode Island Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.41	3269.41	South Carolina Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.42	3269.42	South Dakota Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.43	3269.43	Tennessee Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.44	3269.44	Texas Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.45	3269.45	Utah Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument

3269.50	3269.50	Wisconsin Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3269.51	3269.51	Wyoming Balloon Loan Refinancing Instrument - Single-Family - Fannie Mae Uniform Instrument
3734	3734	Multistate Construction Contract - Single-Family - Fannie Mae HomeStyle Model Document
3735	3735	Multistate Construction Loan Agreement - Single-Family - Fannie Mae HomeStyle Model Document
3739	3739	Multistate Lien Waiver - Single-Family - Fannie Mae Home Style Model Document
3741	3741	Multistate Mortgage Assignment - Single-Family - Fannie Mae Uniform Instrument
3742	3742	Multistate Mortgage Assignment - Single-Family - Fannie Mae Uniform Instrument
3743	3743	Multistate Deed of Trust Assignment - Single-Family - Fannie Mae Uniform Instrument
3744	3744	Multistate Deed of Trust Assignment - Single-Family - Fannie Mae Uniform Instrument
3745	3745	Georgia Security Deed Assignment - Single-Family - Fannie Mae Uniform Instrument
3746	3746	Louisiana Notarial Endorsement & Note/Mortgage Assignment - Single-Family - Fannie Mae Uniform Instrument

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MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated _____, _____, together with all Riders to this document.
(B) "Borrower" is _____. Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is _____. Lender is a _____ organized and existing under the laws of _____. Lender's address is _____. Lender is the mortgagee under this Security Instrument.
(D) "Note" means the promissory note signed by Borrower and dated _____, _____. The Note states that Borrower owes Lender _____ Dollars (U.S. $_____) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____.
(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ Other(s) [specify] _____
☐ 1-4 Family Rider	☐ Biweekly Payment Rider	

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(K) "Escrow Items" means those items that are described in Section 3.
(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby

mortgage, grant and convey to Lender the following described property located in the _____ of _____:
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

which currently has the address of _____
[Street]
_____, Ohio _____("Property Address"):
[City] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is

drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any,

be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste

on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has – if any – with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for

damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security

Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice

of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, costs of title evidence.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Certain Other Advances. In addition to any other sum secured hereby, this Security Instrument shall also secure the unpaid principal balance of, plus accrued interest on, any amount of money loaned, advanced or paid by Lender to or for the account and benefit of Borrower, after this Security Instrument is delivered to and filed with the Recorder's Office, _____ County, Ohio, for recording. Lender may make such advances in order to pay any real estate taxes and assessments, insurance premiums plus all other costs and expenses incurred in connection with the operation, protection or preservation of the Property, including to cure Borrower's defaults by making any such payments which Borrower should have paid as provided in this Security Instrument, it being intended by this Section 24 to acknowledge, affirm and comply with the provision of § 5301.233 of the Revised Code of Ohio.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

_____ _____(Seal)
- Borrower

_____ _____(Seal)
- Borrower

_____ **[Space Below This Line For Acknowledgment]** _____

SOME OF THE CLASS ACTIONS FILED IN MICHIGAN ALLEGING THAT CHARGING OF DOCUMENT PREPARATION FEES IS THE UNAUTHORIZED PRACTICE OF LAW

1. *Inge v Rock Financial Corporation*, 98-1269-CP, Kent County (1998)

¶ 1 "In the past six years, Rock Financial has originated more than 27,000 mortgage loans within the State of Michigan and is believed to have similarly and unlawfully charged thousands of Michigan consumers, hundred of thousands (if not millions) of dollars, in document preparation fees, in connection with its real estate loan operations."

2. *Dressel v Ameribank*, 98-13017-CP, Kent County (1998)

¶ 1 "In the past six years, Ameribank is believed to have similarly and unlawfully charged thousands of consumers, hundreds of thousands of dollars, for legal services, in connection with its real estate operations."

3. *Hearn v Washtenaw Mortgage Co.*, 02-60093, Eastern District Mich (2002)

¶ 32. "The members of each class are so numerous that joinder of all members is impracticable. Defendant has been the lender on thousands of loans throughout the United States where improper fees for document preparation services were charged and collected in the manner described. Upon information and belief, Defendant charged fees for document preparation services in more than 75,000 transactions during the class period."

4. *Van Eck v E & S Financial Group, Inc.*, 01-138174-CP, Wayne County (2002)

¶ 11. "As a direct and proximate result of Defendants' unlawful actions, the plaintiff and thousands of other consumers suffered damages in being charged a fee that was unlawful and unethical pursuant to law."

5. *Bowser v Charter One Bank*, 02-203585-CP, Wayne County (2002)

¶ 11. "As a direct and proximate result of Defendant's unlawful actions, the Plaintiff and thousands of other Michigan consumers suffered damages in being charged a fee that was in violation of law and resulted in Defendant becoming unjustly enriched."

6. *Welsch v Countrywide Home Loans, Inc.*, 01-133699-CP, Wayne County (2001); removed to Eastern District Mich, 01-74198.

¶ 11. "As a direct and proximate result of Defendant's unlawful actions, the Plaintiff and thousands of other consumers suffered damages in being charged a fee that was unlawful and unethical pursuant to law."

7. *Krause v The Huntington National Bank*, 98-00750-CP, Kent County (1998).

¶ 20. "... Upon information and belief, FMB-Grand Rapids has charged thousands of Michigan borrowers 'document preparation' fees during the class period. Information obtained from the Mortgage Bankers Association of America states that for the period 1994 through 1996 alone, FMB-Grand Rapids originated 2,422 mortgages."

8. *Fournier v Flagstar Bank*, 01-133340-CP, Wayne County (2001).

¶ 11. "As a direct and proximate result of Defendant's unlawful actions, the Plaintiff and thousands of other consumers suffered damages in being charged a fee that was unlawful and unethical pursuant to law."

9. *Weiss v Standard Federal Bank*, 02-71341, Eastern District Mich (2002)

¶ 50. "... Defendants have been the lenders on thousands of loans throughout the United States where improper fees for document preparation services were charged and collected in the manner described. Upon information and belief, Standard Federal Bank and ABN AMRO charged fees for document preparation services in more than 100,000 transactions during the class period."

10. *Vandenbroeck v Commonpoint Mortgage Co.*, 1-97-CV-826, Western District Mich. (1997)

¶ 76. "Members of the class are in the hundreds, if not thousands, and are so numerous that joinder of all members is impractical." Second Amended Complaint.

11. *Lewis v First Alliance Mortgage Company*, 99-00814-CP, Kent County (1999).

¶ 11. "... First Alliance has charged thousands of Michigan borrowers hundreds of thousands of dollars in 'document preparation fees ... ."

12. *Brannam v Huntington Mortgage Co.*, 00-40439-CH, Muskegon County (2000).

¶ 11. "... Huntington [Mortgage Co] has charged thousands of Michigan borrowers hundreds of thousands of dollars in 'document preparation' fees ... ."

13. *Shechet v Chase Manhattan Mortgage Corp.*, 01-129385-CP, consolidated with *Boulahanis v Chase Manhattan Mortgage Corp.*, 01-139624-CP, Wayne County (2001).

¶ 5. "... Defendant is believed to have similarly charged and collected hundreds of thousands (if not millions) of dollars of unlawful 'document preparation' fees from thousands of Michigan consumers ... ."

14. *See* also *Cowles v Bank West*, 98-06859-CP, Kent County (1998); *Newton v Bank West*, 99-07845-CP, Kent County (1999); *Weston v Ameribank*, Western District Mich 1:99-CV-698, (1999); *Brannam v Huntington Mortgage Co.*, Western District Mich 1:99-CV-804, (1999); *Tubergen v Team One Home Mortgage, Inc.*, 99-01328-GP, Kent County (1999); *Minix v Long Beach Mortgage Company*, 99-07704-CP, Kent County (1999); *Dyer v Flagstar Bank, FSB*, 01-08497-CP, Wayne County (2001).

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UNAUTHORIZED PRACTICE OF LAW [Updated March 2002]

ALT, KAREN, Circuit Court of Muskegon County, #89-25719-AW, nonlawyer holding herself out as lawyer. The defendant is enjoined from "advertising or otherwise representing defendant as an attorney, rendering legal advice to, and drafting documents for another, and appearing on behalf of any other person or entity in negotiating a claim or transaction of any kind or nature." Stipulated injunction entered 2/26/90.

ANDERSON, ROY, d/b/a ROY'S PARALEGAL AND COPY SERVICE, Circuit Court of Wayne County, #95-520377-AZ, nonlawyer operating a "Paralegal and Copy Service," which includes writing legal motions and briefs that are filed "pro se" by customers. The defendant is enjoined from practicing law in any form in this state, either individually or through any business entity, and acting as representative or intermediary of other persons with regard to their legal matters, including the preparation of any legal documents on behalf of other persons. Injunction entered 2/21/96.

BARTOLI, EDWARD, Circuit Court of Grand Traverse County, #91-9539-AW, inactive member of State Bar enjoined from "holding self out as person authorized to render legal services, adding, changing or deleting language on any form document in which defendant is not a party, and answering questions or offering legal opinions." Injunction entered 4/16/92.

BENNETT, DOUGLAS, Wayne County Circuit Court, File #99-905522-CZ. Nonlawyer who contended he has a constitutional right to practice law and attempted to represent third parties in criminal proceedings on numerous occasions. He drafted and filed legal documents in these cases and rendered legal advice to third persons. The circuit court entered a permanent injunction enjoining the respondent from engaging in the unauthorized practice of law on October 1, 1999. He was found to be in contempt of court on May 2, 2001 and sentenced to 35 days in Wayne County Jail for violating the permanent injunction.

BESS, RONALD, Circuit Court of Branch County, #97-12-769, Bess was affiliated with Michigan Group Associates who would contact senior citizens regarding the purchase of living trusts for $3,000. An injunction was entered by the court barring him from preparing estate planning documents on behalf of other persons. The injunction does allow him to engage in his present profession as an insurance agent. Injunction entered on December 15, 1998.

BROWN, ANTHONY, Circuit Court of Wayne County, #99-906153-CZ, a nonlawyer preparing and filing divorce proceedings on behalf of third parties. He collected a fee for these services, did not use "fill in the blank" forms, substituted his judgment despite directions to the contrary from his clients, and incorrectly drafted many of the documents. Injunction entered 6/18/99.

BROWN, JOHN B., Circuit Court of Washtenaw County, #89-37224-AW, nonlawyer holding himself out as lawyer. He is enjoined from "advertising or otherwise representing self as an attorney, representing any party in any court of this state or any proceeding which involves the construction or interpretation of legal documents, advising any party regarding application of legal principles to a specific factual setting, and negotiating the terms of any agreement or the settlement of any claim." Injunction entered 8/16/89.

CHRISTIAN MEMORIAL CULTURAL CENTERS, Circuit Court of Oakland County, #76-144703-AZ, corporation and nonlawyer agents offering will and estate planning forms without lawyer review. The defendant was enjoined from "preparing or typing wills or trust instruments" and from "counseling, advising or giving legal assistance in the drafting of wills," but was not enjoined from disseminating published materials and forms relating to wills, trusts, and probate and estate planning. The defendant was not enjoined from furnishing vouchers to customers to have wills or trusts prepared by an attorney of their choice or entering into arrangements with attorneys to have them prepare wills for customers. Original injunction entered 8/17/77; amended on 9/18/84.

CRUMPACKER, OWEN W., Circuit Court of Kalamazoo County, #C95-1815-AZ, disbarred Indiana lawyer holding himself out as an attorney licensed in Michigan. He was enjoined from practicing law in any form in this state or from acting as a representative or intermediary for others regarding their legal matters. He was required to destroy all business or personal stationery, business cards, or other printed material identifying himself as an attorney. He was ordered to pay costs to State Bar. Injunction entered 11/17/95.

DAVIS, DUANE M. E., Circuit Court of Wayne County, #89-928593-CZ, nonlawyer holding self out as lawyer. Defendant enjoined from "advertising or holding self out as an attorney, lawyer, counsel, or specialist in any field of law, drafting documents for, giving legal advice to, or making appearances or communicating on behalf of any person." Injunction entered 2/1/90; contempt order entered 7/24/90, 30 days in jail, bond, costs, and expenses. Arrested and convicted on 6/28/96 in Wayne County Circuit Court of felony offense of Obtaining Money Under False Pretenses for accepting a fee to perform legal services. Sentenced 7/25/96 to six months in jail, three years probation, and $7,903 in restitution.

DeFOE, ANTOINETTE, Circuit Court for the County of Berrien, 97-0756-CM, a paralegal engaging in activities reserved for attorneys. She was hired to prepare a divorce and quit claim deed. The divorce judgment drafted by her stated that there was no marital property, but two years after the divorce she prepared a quit claim deed transferring property from the ex-husband to the ex-wife. The ex-husband had remarried and his current wife was entitled half of the property. The ex-wife was trying to sell the property but could not because of a cloud on the title. The consent judgment bars th defendant from giving legal advice and preparin legal documents. She can perform transcriptio services but cannot add, delete, or change languag to standardized forms. She must also post notice o her limitation in her business office and pay th complainants $200. Injunction entered on 1/15/9

EL-JIHAD, JIHAD, Circuit Court of Wayn County, 00-010016-CZ. Nonlawyer, also know as Marcus Gales, drafted legal documents and ren dered legal advice to individuals seeking to obtain divorce, operating a business known as the Leg Network. He was enjoined from drafting legal doc uments and from adding, changing, or deletin language when completing standardized forms acting as intermediary for others with regard t legal matters, and from giving legal advice. He wa also ordered to repay sums obtained from unlaw ful services.

GARLAND R. GRAZIER, a/k/a BUDD GRAZIER, d/b/a PRO SE DOCUMENT COM PANY, Shiawassee County Circuit Court, Cas No.00-004655-CZ. Permanent Injunction entere 3/28/01. Nonlawyer was using a computer pro gram to market and sell will and trust kits to th public. He and his employees, agents, and succes sors are enjoined from counseling or advising cus tomers purchasing legal forms or selecting form on their behalf; filling out such forms for anyone and offering orally or in writing any explanation summaries, or similar statements and document containing legal advice concerning any estate plan ning forms or documents relating thereto.

GARRETT, EUGENE THOMAS, Circui Court Oakland County, 00-26115-CZ. Nonlawye who held himself out as a lawyer and operated business known as Eugene Thomas Garrett and As sociates. He accepted money from individuals os tensibly to assist them in criminal and civil matters He also drafted a quit claim deed. He was enjoine from drafting legal documents, acting as a legal in termediary, and holding himself out as an attorney among other provisions. He was also ordered t repay money obtained from unlawful services.

GREAT LAKES TITLE OF CADILLAC INC., PATRICIA F. MARTIN and ROBERT G. MARTIN, Circuit Court of Wexford County #94-10836-CZ, nonlawyer agents of corporation preparing real estate documents. The defendant were enjoined from drafting documents in whic defendants are not a party and which purport to b tailored to a particular customer or transaction an may not add to, change, or delete language or preprinted forms, make suggestions, or offer opin ions about the applicability of a form or language to a transaction or customer. The defendants were also enjoined from answering legal questions or of fering comments or opinions regarding the terms language, or effect of a document, or the claims rights or responsibilities of any person in a transaction or for a customer or party. The defendants were not enjoined from providing standardized

form documents, providing general instructions relating to those documents, and providing scrivener services to fill in blank spaces in form documents if the name and address of the dictating person appears on the form under the designation "prepared by." Injunction entered 5/24/95.

HARDEN, ROBERT D/B/A HARDEN ASSOCIATES, Circuit Court, Shiawassee County, #98-2430-CZ. Harden was paid $1,200 by an individual to prepare a living trust, a pour-over will, a durable power of attorney, and a durable power of attorney for healthcare, among other documents. The court entered a permanent injunction enjoining Harden from giving legal advice and drafting legal documents. He was also required to return the $1,200 to the customer. Injunction entered 4/16/99.

HOPKINS, MARY LOU, d/b/a the Missing Link, Circuit Court for the County of Calhoun, #97-4299-CZ, a paralegal engaged in activities reserved for attorneys. She would assist individuals by giving legal advice and preparing legal divorce papers without the supervision of a licensed attorney. These activities exceeded those allowed under the *Cramer* decision. Injunction entered 10/7/98.

HUBER, DONALD G., a/k/a D. GRAVATT HUBER, Circuit Court of Ingham County, #91-68953-AW, disbarred lawyer holding self out as lawyer. Huber was enjoined from "holding self out as an attorney at law without also stating that license has been and remains revoked, drafting documents for another person except that defendant may provide and fill in forms at the direction of a party, giving legal advice or offering opinions to others regarding legal implications, communicating on behalf of others, making demands for payment, accepting assignment of legal claims, or acting as intermediary for another in any legal claim." Injunction entered 11/13/91.

KLOPENSTINE, CRAIG, Circuit Court of Jackson County, Case No. 98-087252, paralegal who has represented numerous "clients" without the supervision or direction of a licensed attorney. Klopenstine educated himself in the law while incarcerated. He served as a jailhouse lawyer and upon his release, he continued to practice law. He claims to have a "constitutional right" to practice law. Permanent injunction was entered 12/4/98. He and his assigns are enjoined from giving legal advice and preparing legal documents.

LINDQUIST, ERIC A., Circuit Court of Wayne County, #95-520381-CZ, nonlawyer agent and major shareholder of corporations attempting to represent the corporations during litigation. Lindquist was permanently enjoined from practicing law in any form in this state on behalf of any corporation or other person and from acting as a representative or intermediary for other people or entities regarding legal matters. Injunction entered 2/6/96.

LULGJURAJ, DAVID (DODA), Circuit Court of Macomb County, #97-1391-CZ, nonlawyer "travel agent" who also accepts fees for processing immigration filings with the United States Immigration Service. He was permanently enjoined from preparing legal documents for other persons, giving legal advice to any person, acting as representative or intermediary for others regarding legal matters, including immigration matters. Injunction entered 9/08/97.

LYONS, MICHAEL C.; MICHAEL C. LYONS & ASSOS., Circuit Court of Wayne County, 01-127018-CZ, nonlawyer was drafting legal documents on behalf of third parties and was attempting to appear in court on their behalf. He believed he had the right to practice law because of a power of attorney that was signed by a Michigan attorney before he died, ostensibly granting Lyons the right to practice law under his "P" number. Injunction entered 3/5/02.

MAINARDI, MARGARET, Circuit Court of Wayne County, #91-123925-AW, nonlawyer assisting pro se litigants. She was permanently enjoined from "drafting legal documents, giving legal advice, adding, amending and deleting language from legal form documents, selling or preparing forms for legal services other than preprinted standardized forms, acting as representative or intermediary of others with regard to legal matters, and hiring or contracting with licensed attorneys to provide legal services to others." Original injunction issued 2/28/92; Amended Order of Injunction entered 3/17/95.

Also, in *In the Matter of Bright,* U.S. Bankruptcy Court of the Eastern District of Michigan, #93-42713-S, the bankruptcy court permanently enjoined Mainardi from collecting raw data concerning debtor finances; actual preparation and filing for the debtor of Chapter 7 petitions, statements, and schedules; deciding what information should be placed on forms and in what format; adding language to standard forms not dictated by debtor and transcribed verbatim; responding to debtor questions regarding interpretation or definition of terms; showing debtors reference books; providing information about remedies and procedures available in the bankruptcy system; and acting as an intermediary between debtors and attorneys selected by nonlawyers. Injunction issued 8/9/94.

MARSILJE, EDWARD H., THE TITLE OFFICE, INC., E.H.M., INC., Circuit Court of Ottawa County, #90-12350, title company drafting documents and giving legal advice. The defendants were enjoined from "drafting documents in which defendants are not a party, adding, changing or deleting language on preprinted forms, making suggestions or offering opinions about the applicability of a form of language to a particular transaction or customer, answering questions or offering opinions or comments regarding terms, language or effect of a particular document with regard to a specific customer." Consent agreement and order for stipulated permanent injunction entered 8/13/90. Clarifying opinion entered 8/23/91.

McBRIDE, CHESTER, Circuit Court of Iosco County, #86-105971-CZ, nonlawyer holding himself out as attorney. He was enjoined from "advertising or representing himself to be an attorney, representing any party other than himself in any court of this state, the construction or interpretation of any legal document, advising any party in any matter involving application of legal principles to a specific factual setting, or negotiating the settlement of any claim." Preliminary injunction entered 1/8/87; permanent injunction entered 4/9/87.

MITCHELL, BEN, a/k/a BARRINGTON MITCHELL, Circuit Court of Wayne County, #89-915540-AW, nonlawyer holding himself out as lawyer. He was enjoined from "advertising or representing himself to be an attorney, representing any party other than himself in any court of this state, the construction or interpretation of any legal document, advising any party in any matter involving application of legal principles to a specific factual setting, or negotiating the settlement of any claim." Injunction entered 1/7/87; default contempt order entered 8/8/89; bench warrant issued 8/8/89; second contempt order entered 5/9/90, 30 days in jail, bond, costs, and expenses. Arrested and convicted in Wayne County Recorder's Court, File No. 95-5294, of felony offense of Obtaining Money Under False Pretenses for accepting a fee to perform legal services. Sentenced on 7/20/95 to five years probation, alcohol treatment, community service, and restitution.

MURRAY, PAM, PROFESSIONAL BUSINESS SERVICE, MICHIGAN/GENESEE LEGAL TYPING SERVICE, Circuit Court of Genesee County, #92-14425-CZ, nonlawyer assisting pro se litigants and holding herself out as lawyer. The defendants were enjoined from "rendering legal advice, drafting legal documents, representing any other person or entity in negotiating any claim or transaction, adding, changing, or deleting language when completing form documents, and giving legal advice regarding testimony to be given to the courts of this state." Stipulated order for permanent injunction entered 7/10/92. She was found to be in contempt on 11/5/92 for failure to make restitution. She was also found to be in contempt on 7/19/93 for violating injunction by providing legal advice and drafting legal documents; she was sentenced to 30 days in jail.

PARTNERSHIP ARBITRATION, a partnership composed of JAMES H. McQUILLAN, J. STEPHEN STOUT and KYLE ANDREWS, Circuit Court of Genesee County, #93-19858-CZ, nonlawyers assisting pro se litigants. The three individual defendants and the partnership are enjoined from holding themselves out to the public as qualified to render advice and service to people interested in pursuing claims against Prudential Securities, Inc.; rendering counsel and service to persons seeking to pursue claims against Prudential; furnishing or offering to furnish forms and documents with assistance in their completion to persons

seeking to pursue claims against Prudential; representing parties in the initiation or prosecution of new and pending arbitration proceedings before any arbitration tribunal; and continuing to represent parties in the prosecution of arbitration proceedings before any arbitration tribunal. Injunction entered 12/3/93.

RITTENHOUSE, ALLEN J., Circuit Court of Dickinson County, Case No. D99-11114-CZ. He is licensed to practice law in Texas but has not been admitted to practice in Michigan. He gained admission to the U.S. Bankruptcy Court for the Western District of Michigan based upon his Texas license and operated a law office in Michigan. The State Bar contended that he was practicing Michigan law in his bankruptcy practice and sought injunctions in both state and federal courts. The Dickinson County Circuit Court entered a permanent injunction 8/18/00 prohibiting him from practicing law in state law matters.

The United States Bankruptcy Court in *In the Matter of Ernest J. Desilets, Debtor,* Case No. GM-99-90364, entered an order indefinitely suspending the respondent from appearing before the U.S. Bankruptcy Court and enjoining him from practicing law regarding all actions and potential disputes arising in, arising under, or related to past, pending, and future bankruptcy cases. The order prohibits him from determining when to file bankruptcy cases on behalf of any person; deciding whether to file a chapter 7, chapter 11, or chapter 13 case on behalf of any person; assisting debtors in preparation of schedules, statements, of financial affairs, or other bankruptcy forms; soliciting financial information from debtors; providing people with definitions of legal terms; giving advice on exemptions; preparing motions or responses to motions; advising debtors on dischargeability issues; advising debtors on the automatic stay or their rights arising therefrom; drafting legal instruments for hire; correcting errors or omissions on bankruptcy forms; and advising clients on any other bankruptcy remedy or procedure. Injunction issued 9/26/00.

RODRIGUEZ, ALFREDO, Circuit Court for the County of Ottawa, Case No. 99-33794-CZ. Rodriguez was employed by a lawyer. In the course of his employment, he held himself out as an attorney, collected attorney fees, gave legal advice, and acted as an attorney in immigration matters. Permanent injunction entered 1/07/00.

ROSALES, ESPERANZA, Circuit Court for the County of Van Buren, Case No. 97-43-356-CP-B, Rosales has an office in Hartford, in which she gives legal services to the nonresident farm workers. She advertises and holds herself out as a *notaria.* In Mexico and other Latin American countries a notaria is considered the equivalent of an attorney in the United States. She does considerable INS immigration work for her customers and complaints against her date back to 1991. Farmworkers Legal Services initially filed suit against her, and the State Bar intervened in the lawsuit. She defaulted and never filed motion to set aside default. She did, however, enter into a Consent Judgment that bars her from preparing legal documents, giving legal advice, holding herself out as a notaria or abogada. Consent Judgment entered 3/24/98.

ROWSER, THEDFORD A., Circuit Court of Oakland County, #95-509255-NZ, nonlawyer assisting pro se litigants. He was enjoined from preparing legal documents for others and from adding, changing, or deleting language when completing legal form documents except when he is performing scrivener services to standardized documents as dictated by a party; giving legal advice to any person regarding their particular legal matter; and from acting as a representative or intermediary for others on legal matters. Restitution ordered. Injunction entered 7/03/96.

RUSSELL, VAYDA S. Circuit Court of Oakland County, #01-034827-CZ, nonlawyer, holding herself out as an attorney and ostensibly representing the interests of third parties in a class action lawsuit. She drafted legal documents, gave legal advice, and acted as an intermediary on behalf of third parties in a federal court proceeding. The Oakland Circuit Court, Judge Deborah Tyner, issued a permanent injunction on April 10, 2002.

SNIVELY, TODD J., Circuit Court of Oakland County, #90-382576-CZ, nonlawyer assisting pro se litigants. Snively was enjoined from "advising third parties of their legal rights under FCRA, that TRW, Inc. has violated one or more aspects of FCRA, that they are entitled to file lawsuits against TRW for alleged violations, and preparing complaints or other pleadings and documents on behalf of any other parties." Injunction entered 1/17/90.

TRAVIS, LEIGH, Circuit Court of Washtenaw County, #95-4861-AZ, nonlawyer PhD assisting pro se litigants. He was enjoined from preparing documents that are not standardized form documents; from adding, changing, or deleting language when completing legal form documents, except when he is performing scrivener services; giving any legal opinions to anyone, including opinions on testimony to be given in courts; and acting as a representative or intermediary for anyone on legal matters. Injunction entered 11/22/95.

TRAVIS, RICHARD T., Circuit Court of Oakland County, #84-281751-AZ, nonlawyer holding himself out as a lawyer. He was enjoined from "representing himself as an attorney or qualified to practice law, offer or undertake to provide legal services, drafting legal documents, representing or appearing for any person, and providing legal advice." Injunction entered 10/1/84; contempt order entered 2/8/85; second contempt order entered 1/23/90.

VICKREY, RICHARD, A/K/A DALE GORDON, TROUBLE SHOOTERS, INC., Circuit Court of Genesee County, #95-38098-AZ, nonlawyer assisting pro se litigants. He was permanently enjoined from preparing legal documents for others and from adding, changing, or deleting language when completing legal form documents, giving legal advice to anyone on legal matters, acting as a representative or intermediary for others on legal matters, and must ensure that all advertising and information about his services specifies that the defendants are not authorized to draft legal documents other than standardized forms, and then only if they provide generalized instructions for completing the forms and secretarial services for typing customer-dictated responses on the forms. Injunction entered 10/4/95.

WASHINGTON, MARY, A/K/A MARY LEE AVANT, LEGALWORKS USA, INC., BSC DIVORCES, INC., Michigan corporations and their successors, Circuit Court of Washtenaw County, #90-38759-CZ, corporation and nonlawyer agents giving advice and drafting documents for pro se litigants. The corporate defendants are enjoined from "drafting legal forms for another, giving legal advice to any person, adding, changing or deleting language from legal form documents without the express instruction of a customer, that all advertising and information specify that defendants offer only the sale of preprinted standardized forms, generalized instructions for completing the forms and secretarial services, acting as representative or intermediary of customers, and hiring or contracting with licensed lawyers to provide legal services for defendants' customers." Injunction entered 5/24/90; amended injunction entered 9/5/91; contempt order entered against LegalWorks USA, Inc. and BSC Divorces, Inc., 7/2/91.

Mary Washington, individually, and Legal Point, Inc., were permanently enjoined in Berrien County, File No. 96-3275-CZ-G, from drafting legal documents for others and giving legal advice to anyone; adding, amending and deleting language in legal form documents; selling forms for legal services other than preprinted standardized forms; and acting as representatives or intermediaries for customers on legal matters. Injunction entered 11/22/96.

WEBBER, M. JUDITH, Circuit Court, Isabella County, #99-1531-CZ. Nonlawyer drafting wills, trusts, powers of attorney, and durable powers of attorney for health care, in addition to other legal documents. She was enjoined from drafting legal documents, providing legal advice and from adding, amending, or deleting language on legal forms. Injunction entered 1/28/00.

WEBER, KENNETH, Circuit Court of Jackson County, #91-57909-CZ, nonlawyer assisting pro se litigants. He was enjoined from "selecting language for, drafting and completing legal form documents, giving legal advice to any person, acting as representative or intermediary of customers with regard to their legal matters, communicating on behalf of customers with the court, opposing parties or counsel, and from appearing at hearings on behalf of customers." Injunction entered 7/19/91. ◆

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LILLI FETSCH WENZEL, individually and on behalf of others similarly situated, Plaintiff, v. CITICORP MORTGAGE, INC., Defendant.	No. 01 CH 18067 Calendar 10 consolidated w/
AARON SAMPSON, Plaintiff, v. CITMORTGAGE, INC., Defendant.	No. 01 CH 19912

JUDGE RICHARD A. SIEBEL

AUG 27 2002

Circuit Court - 1778

Memorandum Opinion and Order

Numerous class action lawsuits have been filed in the Circuit Court of Cook alleging that the practice by lending corporations of charging a "document preparation fee" for the preparation of mortgage loan documents constitutes the unauthorized practice of law. At last count forty-five such lawsuits (the "UPL cases") are pending before this Court.

In twelve of the UPL cases the defendants have filed motions to dismiss pursuant to 735 ILCS 5/2-619 on the basis that the plaintiffs' claims are preempted by federal law. Ten of the twelve UPL cases involve defendants that are federally chartered savings associations. Two of the twelve UPL cases, Wenzel v. Citicorp Mortgage, Inc., Case No. 01 CH 18067, consolidated with Sampson v. Citimortgage, Inc., Case No. 01 CH 19912,

involve defendants that are national banks rather than federally chartered savings associations, and are potentially subject to different preemption standards. The Court has addressed the preemption issue with respect to the ten defendants that are federally chartered savings associations in a separate Memorandum Opinion. The motions to dismiss filed by the defendants in these two consolidated cases are hybrid, but the parties have stipulated that the motions be considered as 2-619 motions to dismiss based on preemption.[1]

A motion to dismiss pursuant to Section 2-619 affords a means of obtaining a summary disposition of issues of law or fact. Kedzie and 103rd Currency Exchange, Inc. v. Hodge, 156 Ill. 2d 112, 115 (1993). A Section 2-619 motion to dismiss raises defects or defenses which negate the plaintiff's cause of action or refute conclusions of material fact that are unsupported by allegations of specific fact. Spillyards v. Abbound, 278 Ill. App. 3d 663, 668 (1st Dist. 1996). When proceeding under a Section 2-619 motion, the movant concedes all well-pleaded facts set forth in the complaint together with all reasonable inferences which may be gleaned from those facts. Id. A motion to dismiss pursuant to Section 2-619 should be granted if it raises affirmative matter which completely negates the plaintiff's cause of action or refutes critical conclusions of law or unsupported material facts. Id.

The plaintiffs in these consolidated cases have alleged various causes of action against the defendants, Citicorp Mortgage, Inc. and CitiMortgage, Inc. ("CMI"), including unauthorized practice of law, money had and received, and violation of the Illinois Consumer Fraud Act. The plaintiffs allege that CMI engaged in the unauthorized

[1] In addition, the Office of the Comptroller of the Currency has filed an *Amicus Curiae* brief in support of the defendants' motion to dismiss.

practice of law by charging a "document preparation fee" in connection with preparing the note and mortgage in conjunction with the plaintiffs' residential mortgage loans.

Federal statutes and regulations can preempt state law in the following circumstances: 1) the language of the statute or regulation expressly preempts state law; 2) Congress implemented a comprehensive regulatory scheme in a given area, removing the entire field from state law; or 3) state law as applied conflicts with federal law. Sprietsma v. Mercury Marine, 197 Ill. 2d 112 (2001). Where the statute or regulation contains language expressly preempting state law, the task of statutory construction must focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent. Id.

CMI is an operating subsidiary of Citibank, N.A., a national bank, and as such is subject to the same regulations of the National Bank Act as Citibank, N.A. There is no dispute that national banks have the authority to prepare mortgage loan documents. Moreover, document preparation by a bank does not constitute the unauthorized practice of law. First Federal Savings & Loan v. Sadnick, 162 Ill. App. 3d 581 (3rd Dist. 1987). The Court notes that national banks are authorized under federal law to charge the kinds of fees such as the document preparation fees at issue in the cases *sub judice*. The federal regulations promulgated by the Office of the Comptroller of the Currency ("OCC"), pursuant to the National Bank Act, 12 U.S.C. § 1, *et seq.*, explicitly provide that "[a] national bank may charge its customers non-interest charges and fees, including deposit account service charges." 12 C.F.R. § 7.4002. The regulations further provide that "[t]he establishment of non-interest charges and fees, their amounts, and the method of calculating them are business decisions to be made by each bank, in its discretion,

according to sound banking judgment and sound banking principles." 12 C.F.R. § 7.4002(b)(2).

In the cases *sub judice*, the plaintiffs allege that the defendants' practice of charging a "document preparation fee" for the preparation of certain documents in connection with mortgage transactions constitutes the unauthorized practice of law and violates the Illinois Consumer Fraud Act. The plaintiffs argue that the focus of these claims does not seek to regulate the lending practices of national banks, but rather seeks to regulate the practice of law and to prohibit fraud, matters that are traditionally regulated by state law. The plaintiffs do not object to document preparation by CMI; they do object to the charging of fees for document preparation. The plaintiffs assert that their claims are "incidental" and do not conflict with federal law.

The Court finds that the document preparation fees charged by CMI, upon which the plaintiffs' claims are based, are "non-interest fees" as defined by 12 C.F.R. § 7.4002. Section 7.4002 constitutes a broad grant of authority to national banks and is not intended to subject national banks to purported state limitations in the exercise of their operations. See Barnett Bank v. Nelson, 517 U.S. 25 32-35 (1996). The Court further finds that the plaintiffs' claims, which purport to impose limitations on the defendants' authorization to charge fees for the preparation of documents in connection with mortgage transactions, are in direct conflict with federal law and are thus preempted.

WHEREFORE, IT IS HEREBY ORDERED that the defendants' motions to dismiss are granted and the plaintiffs' Complaints are dismissed with prejudice.

Enter:

JUDGE RICHARD A. SIEBEL

AUG 27 2002

Richard A. Siebel – 1778
Circuit Court - 1778

Dated: August 27, 2002

FIRM ID NO. 38918

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARK N. ETTER, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	No. 02 CH 2193
v.	)	Judge Siebel
CITIBANK F.S.B.,	)	
Defendant.	)	

ORDER

This cause coming on for ruling on Defendant's 2-619 motion to dismiss Plaintiff's complaint, the Court having considered the memoranda and the arguments of counsel, and the Court having prepared a written Memorandum Opinion dated August 27, 2002, a copy of which is attached,

IT IS HEREBY ORDERED that the Defendant's 2-619 motion to dismiss is granted and Plaintiff's Complaint is dismissed with prejudice.

Enter: JUDGE RICHARD A. SIEBEL

AUG 27 2002

Richard A. Siebel – 1778
Circuit Court - 1778

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MEMORANDUM OPINION – Federal Savings Associations

Numerous class action lawsuits have been filed in the Circuit Court of Cook alleging that the practice by lending corporations of charging a "document preparation fee" for the preparation of mortgage loan documents constitutes the unauthorized practice of law. At last count forty-five such lawsuits (the "UPL cases") are pending before this Court.

In twelve of the UPL cases the defendants have filed motions to dismiss pursuant to 735 ILCS 5/2-619 on the basis that the plaintiffs' claims are preempted by federal law. Ten of the twelve UPL cases involve defendants that are federally chartered savings associations. Two of the twelve UPL cases, Wenzel v. Citicorp Mortgage, Inc., Case No. 01 CH 18067, consolidated with Sampson v. Citimortgage, Inc., Case No. 01 CH 19912, involve defendants that are national banks rather than federally chartered savings associations, and are potentially subject to different preemption standards. The Court has addressed the preemption issue with respect to the two defendants that are national banks in a separate Memorandum Opinion.

A motion to dismiss pursuant to Section 2-619 affords a means of obtaining a summary disposition of issues of law or fact. Kedzie and 103rd Currency Exchange, Inc. v. Hodge, 156 Ill. 2d 112, 115 (1993). A Section 2-619 motion to dismiss raises defects or defenses which negate the plaintiff's cause of action or refute conclusions of material fact that are unsupported by allegations of specific fact. Spillyards v. Abbound, 278 Ill. App. 3d 663, 668 (1st Dist. 1996). When proceeding under a Section 2-619 motion, the movant concedes all well-pleaded facts set forth in the complaint together with all reasonable inferences which may be gleaned from those facts. Id. A motion to dismiss

pursuant to Section 2-619 should be granted if it raises affirmative matter which completely negates the Plaintiff's cause of action or refutes critical conclusions of law or unsupported material facts. Id.

In each of these cases the plaintiffs obtained residential mortgage loans from the defendants and the defendants charged a "document preparation fee" for filling out the note and mortgage. In most instances, the defendants prepared the loan documents. In other cases (Porter v. Smith-Rothchild Financial Co., Case No. 01 CH 19984 and Jackson v. Harbor Financial Group, Ltd., Case No. 01 CH 21502) a third party retained by the defendant prepared the documents and the fee was remitted directly to the third party. The plaintiffs assert that the charging of a "document preparation fee" by the defendants constitutes the unauthorized practice of law giving rise to claims for damages, violation of the Illinois Consumer Fraud Act, unjust enrichment, and money had and received.

Generally, the defendants contend that the federal Homeowners' Loan Act of 1933 ("HOLA"), 12 U.S.C. § 1461 *et seq.*, and the regulations promulgated by the federal Office of Thrift Provisions ("OTS"), 12 C.F.R. § 560.2, expressly preempt all claims based on state laws affecting federal savings associations, including state laws affecting loan related fees imposed by federal savings associations.[1]

Federal statutes and regulations can preempt state law in the following circumstances: 1) the language of the statute or regulation expressly preempts state law; 2) Congress implemented a comprehensive regulatory scheme in a given area, removing the entire field from state law; or 3) state law as applied conflicts with federal law. Sprietsma v. Mercury Marine, 197 Ill. 2d 112 (2001). Where the statute or regulation

[1] In addition, the Office of Thrift Provisions has filed an *Amicus Curiae* brief in support of the defendants' motions to dismiss.

contains language expressly preempting state law, the task of statutory construction must focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent. Id.

In Section 5(a) of HOLA, Congress authorized the OTS to issue regulations governing federal savings associations and approved the OTS's promulgation of regulations superseding state law. Moskowitz v. Washington Mutual Bank, 329 Ill. App. 3d 144 (1st Dist. 2002), citing Fidelity Federal Savings & Loan Association v. de la Cuesta, 458 U.S. 141 (1982). Section 560.2 of the OTS regulations provides:

> (a) *Occupation of field.* Pursuant to Sections 4(a) and 5(a) of the HOLA, 12 U.S.C. 1463(a), 1464(a), OTS is authorized to promulgate regulations that preempt state laws affecting the operations of federal savings associations when deemed appropriate to facilitate the safe and sound operation of federal savings associations, to enable federal savings associations to conduct their operations in accordance with the best practices of thrift institutions in the United States, or to further other purposes of the HOLA. To enhance safety and soundness and to enable federal savings associations to conduct their operations in accordance with the best practices (by efficiently delivering low-cost credit to the public free from undue regulatory duplication and burden), *OTS hereby occupies the entire field of lending regulation for federal savings associations.* The OTS intends to give federal savings associations maximum flexibility to exercise their lending powers in accordance with a uniform federal scheme of regulation. Accordingly, *federal savings associations may extend credit as authorized under federal law, including this part, without regard to state laws purporting to regulate or otherwise affect their credit activities*, except to the extent provided in paragraph (c) of this section.... For purposes of this section, state law includes any state statute, regulation, ruling, order or judicial decision.
>
> (b) *Illustrative examples.* The types of state laws preempted by paragraph (a) of this section include, without limitation, state laws purporting to impose requirements regarding:
>
> ***
>
> (b)(5) Loan-related fees, including without limitation, initial charges, late charges, prepayment penalties, servicing fees, and overlimit fees;

***

(c) *State laws that are not preempted.* State laws of the following types are not preempted to the extent that they only incidentally affect the lending operations of federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

(c)(1) Contract and commercial law. 12 C.F.R. § 560.2. (Emphasis added).

Under section 560.2 of the OTS regulations, 12 C.F.R. § 560.2, the OTS occupies the "entire field" of lending regulation for federal savings associations and specifically preempts state laws purporting to impose requirements regarding loan related fees. Moskowitz v. Washington Mutual Bank, 329 Ill. App. 3d 144 (1st Dist. 2002). In Moskowitz, the plaintiff claimed that a bank's practice of requiring her to pay a "payoff statement fee" before the bank released the mortgage violated the Illinois Consumer Fraud Act. The Moskowitz court found that because the "payoff statement fee" was a loan-related fee as defined by OTS regulations, the plaintiff's claims were preempted.

In the cases *sub judice*, the plaintiffs' allege that the defendants' practice of charging a "document preparation fee" for the preparation of certain documents in connection with mortgage transactions constitutes the unauthorized practice of law and violates the Illinois Consumer Fraud Act. The plaintiffs argue that these claims do not seek to regulate the lending practices of federal savings associations, but rather seek to regulate the practice of law and to prohibit fraud, matters that are traditionally regulated by state law. The plaintiffs do not object to document preparation by CMI; they do object to the charging of fees for document preparation. The plaintiffs assert that their claims are "incidental" and do not conflict with federal law. The holding in Moskowitz is clear that where state law purports to impose substantive requirements regarding loan

related fees, the imposition is not "incidental" and such state law claims are preempted by federal law.

The Court finds that the document preparation fees on which the plaintiffs' claims are based are "loan-related fees" within the meaning of section 560.2(b)(5) of the OTS regulations and thus the plaintiffs' claims are preempted by federal law.

By separate order the defendants' motions to dismiss will be granted and the plaintiffs' lawsuits will be dismissed with prejudice.

Enter: JUDGE RICHARD A. SIEBEL

AUG 27 2002

Circuit Court - 1778

Richard A. Siebel – 1778

Dated: August 27, 2002